Supreme Court, U.S.
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No. 95-2078

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

SPRING MEADOWS APARTMENT COMPLEX, LIMITED PARTNERSHIP,

Petitioner,

vs.

DAVID L. STALLINGS and BARBARA J. STALLINGS,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ARIZONA

RESPONDENTS' SUPPLEMENTAL BRIEF IN OPPOSITION

Mark I. Harrison
Counsel of Record
Rodney W. Ott
BRYAN CAVE LLP
2800 North Central
Suite 2100
Phoenix, Arizona 85004-1098
(602) 230-7000

John E. Osborne
GOLDBERG & OSBORNE
33 North Stone
Suite 1850
Tucson, Arizona 85701
(520) 620-3975

Attorneys for Respondents

24pp

QUESTION PRESENTED

Did the particular lift stay order of the bankruptcy court permit respondents to proceed with their complaint previously filed in state court, or did the lift stay order first require respondents to file a second, identical complaint in state court?

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2 Lawrence P. King, Collier On Bankruptcy, ¶ 362.07 8

Pursuant to Supreme Court Rule 15.8, Respondents David L. Stallings and Barbara J. Stallings (collectively, the "Stallings") respectfully submit this supplemental brief in opposition to the petition for a writ of certiorari filed by Spring Meadows Apartment Complex Limited Partnership ("Spring Meadows") to call the Court's attention to the intervening decision of the United States District Court for the District of Arizona denying Spring Meadows' appeal from the bankruptcy court.[1/]

SUPPLEMENTAL STATEMENT OF JURISDICTION

The District Court's decision provides additional support for the Stallings' position that this Court lacks jurisdiction under 28 U.S.C. § 1257(a) to review the judgment of the Supreme Court of Arizona. The District Court recognized that it had no jurisdiction to consider the propriety of the relief granted by the bankruptcy court in the lift stay order, or the propriety of the relief granted in a subsequent clarification order, because neither order was appealed by petitioner. Moreover, this Court also lacks jurisdiction under 28 U.S.C. § 1257(a) to review a state court decision on whether a complaint must be filed twice in state court.

SUPPLEMENTAL STATEMENT OF THE CASE

Spring Meadows never opposed the Stallings' motion for relief from the automatic bankruptcy stay, and did not

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[1/]The District Court's order and judgment are contained in Respondent's supplemental appendix as appendices A and B. References to materials in Respondents' supplemental appendix are given as "Resp. Supp. App. __a." The materials in petitioner's appendix are cited as "Pet. App. __a."

appeal the bankruptcy court's June 25, 1991 order permitting the Stallings to "proceed" with their personal injury claim against Spring Meadows in the Arizona state courts. Stallings v. Spring Meadows Apartment Complex Ltd. Partnership, 913 P.2d 496, 497 (Ariz. 1996) ("Stallings II"); Pet. App. 4a. Spring Meadows withdrew its appeal of the bankruptcy court's clarification order of December 6, 1994, which (1) held that the order of June 25, 1991 "annulled" the bankruptcy stay and was intended to provide retroactive relief, and (2) in the alternative, explicitly "annulled" the bankruptcy stay and granted retroactive relief validating the January 14, 1991 filing of the complaint in state court. Stallings II, 913 P.2d at 498; Pet. App. 6a-7a.

Instead of appealing either of these orders, Spring Meadows filed a motion to correct the bankruptcy court's December 6, 1994 clarification order, which motion the bankruptcy court denied. Resp. Supp. App. 2a. Spring Meadows then sought reconsideration of the bankruptcy court's denial of the motion to correct, which motion was also denied. Resp. Supp. App. 2a. Spring Meadows eventually filed a renewed motion for reconsideration of the December 6, 1994 clarification order. After the bankruptcy court denied that motion, Spring Meadows appealed to the District Court. Resp. Supp. App. 3a.

On August 28, 1996, after Spring Meadows' petition for certiorari to this Court had been fully briefed, the District Court denied Spring Meadows' appeal from the bankruptcy court and affirmed the bankruptcy court's ruling. The District Court agreed that the bankruptcy court order of June 25, 1991 granted retroactive relief to the Stallings. Resp. Supp. App. 5a. The District Court also noted that Spring Meadows had failed to appeal either the order of June 25, 1991 or the clarification order of December 6, 1994, and

agreed with the Stallings that the District Court must review the bankruptcy court's denial of the motion for reconsideration under an abuse of discretion standard. Resp. Supp. App. 3a. Moreover, the District Court held that no abuse of discretion had occurred:

> This Court cannot conclude that the bankruptcy court's denial of Spring Meadows' motion was an abuse of discretion. It was filed well after the time to appeal [the clarification order] had run and was treated as a Rule 60 motion. Further, even reviewing the underlying judgment, it cannot be said that the 1994 clarification order was in error. Spring Meadows is potentially liable in state court only to its insurance policy limits. It is not prejudiced by retroactive relief. The Stallings innocently filed their state court action, without knowledge that Spring Meadows had just filed a petition in bankruptcy. The violation of the stay was a technical one, innocently done and easily corrected by the bankruptcy court's order. The Stallings have thus far been denied an opportunity to pursue their tort claim, despite the absence of prejudice to the bankruptcy estate or any unfairness to other creditors.

Resp. Supp. App. 5a. The District Court also rejected Spring Meadows' argument that Spring Meadows was prevented from appealing the clarification order because Spring Meadows' current counsel failed to receive a copy of the order:

> Current counsel complains that it did not receive notice of the entry of the [clarification] order, but it was not counsel of record at the time and had not been approved by the bankruptcy court. As such, they were not entitled to notice. Moreover, Spring Meadows had actual knowledge of the December 6, 1994 [clarification order] in the last week of December 1994. At that point, Spring Meadows could have sought an extension of time to appeal, but it did not. This Court will not reverse the bankruptcy court in order to correct [Spring Meadows'] mistake.

Resp. Supp. App. 6a. On September 4, 1996, the District Court entered a final judgment denying Spring Meadows' appeal from the bankruptcy court and affirming the bankruptcy court's clarification order of December 6, 1994. Resp. Supp. App. 8a-9a.

SUPPLEMENTAL REASONS FOR DENYING THE WRIT

I.

SPRING MEADOWS' PETITION FAILS TO RAISE IMPORTANT UNSETTLED QUESTIONS OF FEDERAL LAW.

The intervening decision by the District Court for the District of Arizona supports the Stallings' argument that Spring Meadows' petition fails to raise any important unsettled question of federal law meriting review by this

Court. The bankruptcy court repeatedly authorized continued prosecution by the Stallings of their personal injury case in the Arizona state courts. By its recent decision, the District Court also authorized the Stallings to continue prosecution of their claim in state court.

Spring Meadows did not appeal either the June 25, 1991 order permitting the Stallings to "proceed" in state court or the December 6, 1994 clarification order. Instead, Spring Meadows seeks a writ of certiorari by this Court to review a decision by the Supreme Court of Arizona permitting the Stallings to proceed in state court without filing a second, identical complaint. This is simply not a federal issue. Cf. Pettibone Corp. v. Easley, 935 F.2d 120, 121, 123 (7th Cir. 1991) ("No federal interest is in play; the bankruptcy court authorized the continued prosecution of [this case] . . . Once the [bankruptcy] judge authorized the prosecution of the personal injury actions, however, all that remained was a debate about the consequences of filing the tort action while the stay was outstanding") (emphasis in original).

Moreover, the District Court agreed with the bankruptcy court and with the Supreme Court of Arizona that the June 25, 1991 bankruptcy court order in fact provided retroactive relief. Resp. Supp. App. 5a. By its petition for a writ of certiorari, Spring Meadows seeks yet another interpretation, by this Court, of the meaning of the underlying bankruptcy order. This issue does not merit this Court's time, and Spring Meadows' petition should be denied.

II.

THE "VOID" OR "VOIDABLE" QUESTION IS IRRELEVANT TO THIS CASE.

The District Court also agreed that the "void" or "voidable" debate much argued by Spring Meadows is irrelevant to this case because the bankruptcy court granted retroactive relief on June 25, 1991. "[T]he bankruptcy court has the power to annul the stay and thereby validate void actions." Resp. Supp. App. 4a. Once the bankruptcy court granted retroactive relief validating the Stallings' complaint, the "void" or "voidable" debate became merely a scholastic dispute with no relevance to this case. Cf. Pettibone Corp., 935 F.2d at 123.

III.

THE APPROPRIATENESS OF RETROACTIVE RELIEF IS NOT PROPERLY BEFORE THIS COURT.

The District Court agreed with the Stallings' position that the issue of the appropriateness of retroactive relief had been waived by Spring Meadows, first when it failed to appeal the June 25, 1991 order, and again when it failed to appeal the December 6, 1994 clarification order. The District Court could only review the bankruptcy court's denial of Spring Meadows' renewed motion for reconsideration under an abuse of discretion standard. Resp. Supp. App. 3a.

The issue of the appropriateness of retroactive relief is even less properly presented here. The Supreme Court of Arizona held only that the bankruptcy court had in fact

granted retroactive relief in the June 25, 1991 order, Stallings II, 913 P.2d at 499; Pet. App. 9a-10a, and that therefore the Stallings did not need to file a second, identical complaint in state court. The appropriateness of retroactive relief was not even an issue.

IV.

ALTHOUGH THE ISSUE IS NOT PROPERLY BEFORE THIS COURT, RETROACTIVE LIFTING OF THE BANKRUPTCY STAY WAS PROPER.

Even though the issue was not before the District Court, that court agreed that retroactive relief was proper in this instance:

> Spring Meadows is potentially liable in state court only to its insurance policy limits. It is not prejudiced by retroactive relief. The Stallings innocently filed their state court action, without knowledge that Spring Meadows had just filed a petition in bankruptcy. The violation of the stay was a technical one, innocently done and easily corrected by the bankruptcy court's order. The Stallings have thus far been denied an opportunity to pursue their tort claim, despite the absence of prejudice to the bankruptcy estate or any unfairness to other creditors.

Resp. Supp. App. 5a.

As noted by the District Court, retroactive relief was proper because the Stallings innocently filed their complaint

in state court while they were unaware of the bankruptcy stay. See also In re Jones, 63 F.3d 411, 413 (5th Cir. 1995), cert. denied, 116 S. Ct. 1566 (1996) (retroactive relief was permitted when claimant had no notice of bankruptcy stay); Franklin Savings Ass'n v. Office of Thrift Supervision, 31 F.3d 1020, 1023 (10th Cir. 1994) (retroactive reinstatement of claims permitted when claimants are "honestly ignorant of the bankruptcy stay"); Sikes v. Global Marine, Inc., 881 F.2d 176, 180 (5th Cir. 1989)(no purpose served by requiring claimants, who had been unaware of the bankruptcy court stay, to file a second identical complaint). Moreover, permitting retroactive relief was proper because it affected only Spring Meadows' liability insurance carrier, not Spring Meadows or Spring Meadows' other creditors. See 2 Lawrence P. King, Collier On Bankruptcy, ¶ 362.07, at 362-75 (1996) ("Where the claim is one covered by insurance or indemnity, continuation of the action should be permitted since hardship to the debtor is likely to be outweighed by hardship to the plaintiff.").

CONCLUSION

For the foregoing reasons and the reasons stated in the Stallings' brief in opposition, the petition for a writ of certiorari should be denied.

Respectfully submitted,

Mark I. Harrison
Counsel of Record
Rodney W. Ott
BRYAN CAVE LLP
2800 North Central Avenue, Suite 2100
Phoenix, Arizona 85004-1098
(602) 230-7000

John E. Osborne
GOLDBERG & OSBORNE
33 North Stone, Suite 1850
Tucson, Arizona 85701
(520) 620-3975

Attorneys for Respondents

APPENDIX A – ORDER OF UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA DENYING SPRING MEADOWS' APPEAL FROM THE BANKRUPTCY COURT.

[Filed Sep 4, 1996]
Clerk U.S. District Court
District of Arizona
By /s/ SMS Deputy

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

In re SPRING MEADOWS APARTMENT COMPLEX, Debtor.	)No CIV 96-245-TUC RMB
DAVID L. STALLINGS and PATRICIA J. STALLINGS. Movants/Appellees, vs. SPRING MEADOWS APARTMENT COMPLEX, Respondent/Appellant.	**ORDER**

In this appeal from the bankruptcy court, the Appellant seek a reversals of the bankruptcy court's order granting retroactive annulment of a stay of the Appellees' personal injury complaint. Because it finds that the bankruptcy court did not err, this Court herein denies the appeal.

BACKGROUND

Appellee David Stallings was injured on a staircase at the Spring Meadows Apartment Complex in May 1989. Spring Meadows filed a Chapter 11 petition for Bankruptcy on January 4, 1991, and the Stallings filed a tort action in Maricopa County Superior Court on January 14, 1991. On May 31, 1991 the Stallings filed a motion for relief from automatic stay, so that they might proceed with their tort claim in state court. The bankruptcy court granted the unopposed motion on June 25, 1991.

In October 1994, the Stallings filed a motion to clarify the bankruptcy court's June 25, 1991 order. They asked the bankruptcy court to make clear that the original order had granted the Stallings the specific relief of allowing them to proceed with their pending state action without filing a new complaint. On December 6, 1994, the bankruptcy court did so and made the clarification order retroactive to the date of the original order.

Spring Meadows filed and then subsequently withdrew a notice of appeal. It then filed a motion to correct in the bankruptcy court. The bankruptcy court, believing it was without jurisdiction due to the notice of appeal, denied the motion to correct on jurisdictional grounds. Spring Meadows sought reconsideration of the bankruptcy court's denial of the motion to correct, which

was denied. Spring Meadows filed a renewed motion, again asking the bankruptcy court to reverse its December 6, 1994 clarification order. The bankruptcy court denied the renewed motion on March 13, 1996, and Spring Meadows now appeals that denial to this court.

DISCUSSION

In this appeal, Spring Meadows contends that the bankruptcy court erred in two respects: (1) in granting retroactive annulment of the bankruptcy stay and (2) in denying the request to re-enter the clarification order. Each is considered in turn.

I. The December 6, 1994 Retroactive Annulment Order

The December 6, 1994 order that clarified the June 25, 1991 order, retroactively annulled the stay, allowing the Stallings to proceed with their state court action. Spring Meadows appeals that order, arguing that the circumstances of this case do not justify the extreme relief of retroactive annulment.

The Appellees respond that this Court should not reach the merits of Spring Meadows' arguments because no appeal was taken from the June 1991 or December 1994 bankruptcy court orders. Rather, the Appellant filed a motion for reconsideration pursuant to FED R. CIV. P. 59 or 60. The Court agrees with the Appellees and herein reviews the bankruptcy court's denial of the motion for reconsideration for abuse of discretion. *Browder v. Dept. Of Corrections*, 434 U.S. 257, 263 n.7 (1978); *Harmon v. Harper*, 7 F.3d 1455, 1457 (9th Cir. 1993).

Spring Meadows asserts that even under that deferential standard, the bankruptcy court erred, abusing its discretion. This is, Spring Meadows argues, because the bankruptcy court's December 1994 order and its subsequent orders relating to the December 1994 order are directly contrary to established Ninth Circuit precedent.

Spring Meadows cites *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992) for the proposition that the Stallings' act of filing its state court claim in violation of the automatic bankruptcy stay is void. However, Spring Meadows also correctly points out that the bankruptcy court has the power to annul the stay and thereby validate void actions. *See* U.S.C. § 362(d). The power to annul is the power to provide retroactive relief from the stay. *Schwartz*, 954 F.2d at 572-73; *In re National Eviron. Waste Corp.*, 191 Bankr. 832, 836 (Bankr. E.D. Cal. 1996).

While acknowledging the bankruptcy court's power to annul the stay and grant retroactive relief to the Stallings, Spring Meadows contends that the court erred in doing so because this case does not contain the extreme circumstances found in annulment cases. *See In re Kissinger*, 72 F.3d 107 (9th Cir. 1995) (extraordinary retroactive stay relief appropriate under extreme circumstances). That is, in this case there is no bad faith, fraud or other egregious conduct that would constitute an extreme circumstance to warrant annulment.

The Appellant suggests quite the opposite. It suggests that the Stallings' lack of diligence created this problem because they did not request retroactive relief in 1991 when they originally sought to proceed in the state court. It was not until August 1994 that the Stallings sought a ruling on retroactive relief from stay. While the

Appellant's argument is vigorous, it ignores the posture of the bankruptcy court's December 1994 order.

In December 1994, the bankruptcy court did not grant retroactive relief, rather it made clear that it had intended retroactive relief in 1991. The 1994 order merely clarified the earlier 1991 order. The Appellees did not seek earlier clarification of the 1991 order because there was no hindrance to their state court claim prior to the Arizona Court of Appeals' affirmance of the state court's grant of Spring Meadows' motion for summary judgment. When the court of appeals upheld the superior court's grant of judgment in favor of Spring Meadows, the Stallings then could no longer proceed in state court, absent the bankruptcy court's clarification.

This Court cannot conclude that the bankruptcy court's denial of Spring Meadows' motion was an abuse of discretion. It was filed well after the time to appeal had run and was treated as a Rule 60 motion. Further, even reviewing the underlying judgment, it cannot be said that the 1994 clarification order was in error. Spring Meadows is potentially liable in state court only to its insurance policy limits. It is not prejudiced by retroactive relief. The Stallings innocently filed their state court action, without knowledge that Spring Meadows had just filed a petition in bankruptcy. The violation of the stay was a technical one, innocently done and easily corrected by the bankruptcy court's order. The Stallings have thus far been denied an opportunity to pursue their tort claim, despite the absence of prejudice to the bankruptcy estate or any unfairness to other creditors.

II. Re-Entry of the December 6, 1994 Order

When the bankruptcy court entered the 1994 Order, the Appellant's present counsel did not receive a copy of it. The Appellant argues that the bankruptcy court's refusal to re-enter the December 6, 1994 upon request was an error because counsel's failure to receive it prevented Spring Meadows from timely appealing it. The Appellees respond that Spring Meadows' counsel, though unapproved counsel, was aware of the Stallings motion, but failed to timely object or seek an extension of time to appeal the order.

Current counsel complains that it did not receive notice of the entry of the order, but it was not counsel of record at the time and had not been approved by the bankruptcy court. As such, they were not entitled to notice. Moreover, Spring Meadows had actual knowledge of the December 6, 1994 in the last week of December 1994. At that point, Spring Meadows could have sought an extension of time to appeal, but it did not. This Court will not reverse the bankruptcy court in order to correct the Appellant's mistake.

CONCLUSION

Based upon the foregoing, it is

ORDERED that Spring Meadow's appeal from the bankruptcy court filed April 22, 1996 is DENIED and the bankruptcy court's ruling is AFFIRMED. It is

FURTHER ORDERED that Appellees' "Motion to Strike Appellant/Debtor Spring Meadows' Reply Brief" filed July 18, 1996 is DENIED.

DATED this 28 day of August, 1996.

/s/ Richard M. Bilby
RICHARD M. BILBY
Senior United States District Judge

I hereby attest and certify on 9/10/96 that the forgoing document is a full, true and correct copy of the original on file in my office and in my custody.

Clerk, U.S. District Court
District of Arizona

By: /s/ J H Devine Deputy

APPENDIX B – JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA.

[Filed Sep 5, 1996]
Clerk U.S. District Court
District of Arizona
By /s/ SMS Deputy

UNITED STATES DISTRICT COURT

IN AND FOR THE STATE OF ARIZONA

SPRING MEADOWS APARTMENT COMPLEX, Debtor.	
DAVID L. and PATRICIA STALLINGS. Movant/Appellees, vs.	JUDGMENT IN A CIVIL CASE Case No. CV 96-245-TUC-RMB
SPRING MEADOWS APARTMENT COMPLEX, Respondent/Appellant.	

DECISION BY COURT. This action came under consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that the appeal from bankruptcy court filed April 22, 1996 is DENIED and the bankruptcy court's ruling is AFFIRMED, it is

FURTHER ORDERED and ADJUDGED that the Motion Strike Appellant/Debtor Spring Meadows Reply Brief is DENIED.

September 4, 1996
Date

RICHARD H. WEARE
CLERK

/s/ Virginia Abeyta
(By) Deputy Clerk